

No. 10593

IN THE
United States Circuit Court of Appeals¹⁶
FOR THE NINTH CIRCUIT

FRANK KRAMER,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

APPELLANT'S REPLY BRIEF.

JOHN S. COOPER,
344 Bradbury Building, Los Angeles 13,
Attorney for Frank Kramer, Appellant.

FILED

JUL 10 1944

PAUL P. O'BRIEN,
CLERK

TOPICAL INDEX.

	PAGE
Statement	1

TABLE OF AUTHORITIES CITED.

CASES.	PAGE
Palmero v. United States, 112 Fed. (2d) 922.....	3
Pong Wing Quong v. United States, 111 Fed. (2d) 751.....	3

STATUTES.	
United States Codes Annotated, Title 21, Sec. 173.....	3
United States Codes Annotated, Title 21, Sec. 174.....	3
United States Codes, Title 18, Sec. 550.....	3

No. 10593

IN THE

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

FRANK KRAMER,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

APPELLANT'S REPLY BRIEF.

Statement.

In considering Appellee's Reply Brief, in so far as the jurisdictional statement is concerned, the statement is correct. On page 3 thereof under the heading "Summary of the Evidence" as follows: "As that summary neglects to depict some of the more important evidence disclosed at the time of trial and as appellant contends that the judgment of the court is not only contrary to the law but also to the evidence, it is perhaps advisable for the government to herein set forth a more accurate statement of the evidence produced in the District Court." As to this statement we respectfully refer to page 2 of our opening brief wherein we say: "The evidence is set forth in narrative form in bill of exceptions contained within the

transcript of the record beginning with page 22 and following through to page 67," to which we now wish to add that the evidence contained within the bill of exceptions beginning at page 22, Transcript of Record, and ending at page 107, is a full and complete statement of the evidence and its accuracy is particularly shown on page 107 of the transcript of the record wherein is stated: "I have read the foregoing Bill of Exceptions, approved it, and stipulate that it may be filed. Charles H. Carr, U. S. Attorney, by Walter S. Binns, Ass't. U. S. Attorney." Now if this stipulation means anything it means exactly what it says and that is that both the attorney for the appellant Frank Kramer and the District Attorney who settled and allowed the Bill of Exceptions knew and stipulated with the court that the same is full and complete, therefore in reply to the District Attorney's writing appellee's brief in this case we say that neither his interpretation nor the interpretation of the writer of this brief are necessarily to be followed by the Circuit Court of Appeals and, in so far as his interpretation is concerned, we say that it is far from correct and as he has made the same statement concerning our resume we therefore are of the opinion that the laborious task of settling this dispute is placed upon the Court which has to decide this appeal.

This brings us to the points of law. The point of law raised on page 7 of Appellant's Opening Brief was that the verdict is contrary to law and evidence as to all three counts. The distinction there sought to be made under Count I is entirely overlooked in the appellant's brief. The charge made in Count I against Frank Kramer was that he, Frank Kramer, together with others, did willfully, unlawfully, feloniously and fraudulently import and

bring into the United States certain narcotics in violation of Section 174 of 21 U. S. Codes Annotated. Section 173 of U. S. Codes Annotated says that it is unlawful to import or bring into the United States smoking opium. Section 174 of the same act provides the penalty therefor. Now we will consider, not only for the proposition of argument, but as an elementary proposition of law that under Section 550 of Title 18 U. S. Codes that the distinction between principals and accessories is distinctly abolished, therefore we consider the elementary proposition made by appellee that all persons concerned therewith are principals but we say without equivocation as was said by Judge Mahoney, in the case of *Palmero v. United States*, 112 Fed (2d) p. 922, that under the provision of Section 174 that a person can be charged with the act or likewise he can be charge, as was charged in that case, with aiding and assisting in the unlawful importation of opium, or as was more clearly stated by Judge Stephens of this Circuit in the case of *Pong Wing Quong v. United States*, 111 Fed. (2d) p. 751, that the importation takes place the minute the narcotic crosses the line, therefore we say that the importation of the drug was by the act of Katherine Wilson. Following this argument out logically, we now refer to Count II in our opening brief. If Katherine Wilson imported the drug and the drug was imported the minute it crossed the line, certainly Frank Kramer did not thereafter receive, conceal or buy after importation a drug knowing it to be imported, therefore the inconsistency of these two Counts appear on their face. The unadulterated facts from the Government's viewpoint, taking the evidence most favorable to the Government, attempt to show that in Mexico Frank Kramer caused

Katherine Wilson to conceal the narcotics on her person and while so concealed that the car was driven across the line, the narcotics being concealed on Katherine Wilson's person. We now say that the importation took place at the moment the narcotics crossed the line and further say that no other act took place thereafter. If these acts constituted an offense they so constituted an offense because of the criminal agreement between Katherine Wilson and Frank Kramer, therefore we say that in no way could Frank Kramer be guilty of all three Counts, including the conspiracy count and this is the proposition of law that we urgently urge.

Now, leaving this point for a minute, we also say that the evidence in itself does not show Frank Kramer to be guilty of any offense for reason of the fact that outside of the circumstances, which shows an act of importation by Katherine Wilson, that her word that he caused her to so import these narcotics is unworthy of belief and therefore that this Court, the Circuit Court of Appeals, should reverse and remand this case to the trial court, both as a matter of law and as a matter of fact.

Respectfully submitted,

JOHN S. COOPER,

Attorney for Frank Kramer, Appellant.